



## FACT SHEET ON DISQUALIFICATION FROM MUNICIPAL DECISIONS PART 3: SOURCES OF INCOME

The City's Ethics Ordinance includes laws that prohibit City Officials from influencing municipal decisions when those decisions are substantially likely to have a material financial effect on their economic interests. This fact sheet is one of a series of fact sheets designed to offer general conflict of interest guidance to City Officials who participate in making municipal decisions. This particular fact sheet is focused on conflicts that stem from sources of income to a City Official. Keep in mind that the information offered in this fact sheet should not be considered a substitute for the actual language contained in the Ethics Ordinance.

- ❖ The Ethics Ordinance prohibits City Officials from participating in a municipal decision if it is reasonably foreseeable (i.e., substantially likely) that the decision will have a “material financial effect” on any person or entity from whom the official has received \$500 or more within the previous twelve months.
- ❖ Income includes salary, rental income, proceeds from a sale, forgiveness of a loan, reimbursement of expenses, per diem, outstanding loans, commission income, and incentive compensation.
- ❖ Under this rule, for example, a City Official who receives compensation from an outside contract with a local company would likely be unable to participate in a City decision that would benefit the company's business.
- ❖ Your income also includes any community property interest in the income of your spouse or registered domestic partner. You have an economic interest in his or her source of income that amounts to at least \$1,000 (your 50% community property interest would be \$500 or more) within the previous twelve months.
- ❖ Your income includes your pro rata share of any income received by any business entity or trust in which you, your spouse, or your registered domestic partner own a 10-percent or greater interest. If, for example, your spouse owns a business, you will have an economic interest in any clients or customers who paid that business \$1,000 (your community property pro rata share would be \$500) or more within the previous twelve months.
  - ✓ Under certain circumstances, a customer of a business entity engaged in retail sales of goods or services to the public may not be a source of income to a City Official.
  - ✓ Because the rules applicable to such situations are too lengthy to detail in this fact sheet, please contact the Ethics Commission for additional assistance.
- ❖ If you and your spouse or registered domestic have a separate property agreement (such as a pre-nuptial agreement) stating that you have no community property interest in the other person's income, then you are not required to consider that other person's income for disqualification

purposes. Note, however, that this “separate property” exception is limited to the other person’s income and does not apply to his or her interests in a business entity.

- ❖ Income also does not include your salary from a former employer if (a) you received, or were entitled to receive, all such salary from the former employer before you became a City Official; (b) the income was received in the normal course of the previous employment; (c) you had no expectation when assuming office that you would return to the employ of the former employer.
- ❖ For purposes of this rule, “income” does not include salary, reimbursement for expenses, per diem, or similar benefits received from a federal, state, or local governmental entity. The salary a City Official’s spouse receives from a job with the County of San Diego, for example, is not considered “income” for purposes of this conflict of interest rule.
- ❖ “Income” also does not include an inheritance, a loan from a commercial lending institution on terms available to the general public, loans from family members, campaign contributions, alimony, or child support payments.
- ❖ If you have a source of income from a business entity, you must also consider any other business entity that is a parent or subsidiary of, or is otherwise related to, the entity that is the source of income. Generally speaking, a parent-subsidiary relationship exists when one entity owns 50% or more of another entity. In addition, businesses are considered “related” when one entity has a controlling interest in the other, the entities share management, or the same person controls both entities.
- ❖ Before you can determine whether or not a municipal decision will have a “material” (i.e., having a significant consequence) effect on a source of income, you must first identify how close the relationship is between the decision and the source of income. In other words, you must determine whether the source of income is “directly involved” or “indirectly involved” in the decision.
- ❖ A source of income is considered directly involved in a municipal decision when it, either directly or through an agent:
  - ✓ initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;
  - ✓ is a named party in the decision, or is otherwise the subject of the decision. A person is the subject of a decision if the decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the person.
- ❖ If the source of income is “directly involved,” then the financial effect of a municipal decision on the entity is deemed to be “material.” In such instances, there is no presumption that may be rebutted.
- ❖ If a source of income is not “directly involved” as described above, but will still be affected by a particular decision, then the source of income is considered “indirectly involved” in the decision. The financial effect of a municipal decision on a source of income that is “indirectly involved” depends on whether the source of income is a business entity, a non-profit entity, or an individual. The larger the business entity or non-profit entity, the greater the impact the decision will need to be on that entity in order for the financial effect to be considered “material.” A decision that has a negligible financial impact on a large business entity, for example, could have a substantial impact on a small business. In other words, what is “material” to a small company might not be “material” to a large one.

- ❖ Please refer to the chart below for assistance in determining how much impact a municipal decision will need to have for the financial effect to be considered “material” to an indirectly involved business entity operated for profit:

TYPE OF FOR-PROFIT BUSINESS ENTITY	IMPACT OF DECISION ON “INDIRECTLY INVOLVED” FOR-PROFIT BUSINESS ENTITY		
	Will increase or decrease the business entity's gross revenues for a fiscal year by:	Will cause entity to incur or avoid additional expenses or reduce or eliminate existing expenses for a fiscal year in the amount of:	Will increase or decrease the value of the business entity's assets or liabilities by:
Listed on the Fortune 500	\$10 million	\$2.5 million	\$10 million
Listed on the New York Stock Exchange	\$500,000	\$200,000	\$500,000
Had earnings before taxes of no less than \$2.5 million	\$500,000	\$200,000	\$500,000
Listed on the NASDAQ or American Stock Exchange	\$300,000	\$100,000	\$300,000
Had net income of no less than \$500,00, or earnings before taxes of no less than \$750,000	\$300,000	\$100,000	\$300,000
Any entity not covered above	\$20,000	\$5,000	\$20,000
Note: If more than one of the above categories is applicable, apply the one with the highest dollar threshold.			

- ❖ Non-profit entities have different thresholds. Please refer to the chart below for assistance in determining how much impact a municipal decision will need to have for the financial effect to be considered “material” to an “indirectly involved” non-profit entity:

GROSS ANNUAL RECEIPTS OF NON-PROFIT ENTITY	IMPACT OF DECISION ON “INDIRECTLY INVOLVED” NON-PROFIT ENTITY		
	Will increase or decrease the entity's gross receipts for a fiscal year by:	Will cause entity to incur or avoid additional expenses or reduce or eliminate existing expenses for a fiscal year in the amount of:	Will increase or decrease the value of the entity's assets or liabilities by:
\$400 million or more	\$1 million	\$250,000	\$1 million
More than \$100 million, less than \$400 million	\$400,000	\$100,000	\$400,000
More than \$10 million, less than or equal to \$100 million	\$200,000	\$50,000	\$200,000
More than \$1 million, less than or equal to \$10 million	\$100,000	\$25,000	\$100,000
More than \$100,000, less than or equal to \$1 million	\$50,000	\$12,500	\$50,000
\$100,000 or less	\$10,000	\$2,500	\$10,000

- ❖ There are different materiality standards for individuals. The financial effect of a municipal decision on an individual who is a source of income will be material if the decision will affect:
  - ✓ the individual's income, investments, or other tangible or intangible assets or liabilities (other than real property) by \$1,000 or more; or
  - ✓ the development potential, income potential, use, or neighborhood characteristics of the individual's real property interest.
- ❖ Because the materiality standards for indirectly involved sources of income can be complicated, please contact the Ethics Commission for assistance when making these determinations. Keep in mind, however, that whether or not it is substantially likely that a municipal decision will have a particular effect on a source of income is a determination that you must make yourself. The Ethics Commission does not act as a finder of facts when providing conflict of interest advice.
- ❖ Even if it is substantially likely that the financial effect of a municipal decision on a source of income is material, you will not be disqualified from participating in that decision if you can establish that the decision will affect that entity or individual in a manner that is no different from the manner in which the decision will affect the public generally.
  - ✓ If the source of income is a business entity or a non-profit entity, the "public generally" exception will apply if the decision also affects, in substantially the same manner, either 2,000 or twenty-five percent of all such entities in the City (or in the district you represent) so long as the effect is on entities composed of more than a single industry, trade, or profession.
  - ✓ If the source of income is an individual, the "public generally" exception will apply if the decision also affects, in substantially the same manner: (a) ten percent or more of the City's residents (or of the district you represent), or (b) 5,000 individuals who are City residents.
- ❖ If the municipal decision involves a contract, be sure you also review the Ethics Commission's "Fact Sheet on Financial Interests in a Contract."

Determining whether or not you have a conflict of interest in a particular municipal decision can be a complicated matter. Do not hesitate to contact the Ethics Commission at (619) 533-3476 for additional assistance.

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